

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	02 Cr. 649 (TPG)
v.	:	Filed: May 16, 2002
MITCHELL E. MOSALLEM;	:	Violations: 15 U.S.C. § 1
JOHN GHIANNI;	:	18 U.S.C. § 371
HALUK K. ERGULEC;	:	
BIRJ DECKMEJIAN;	:	
THE COLOR WHEEL, INC.,	:	
Defendants.	:	

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INDICTMENT

SHERMAN ACT CONSPIRACY  
(15 U.S.C. § 1)

The Grand Jury charges:

1. Mitchell E. Mosallem, John Ghianni, and The Color Wheel, Inc. are hereby indicted and made defendants on the charge stated below.

I. THE RELEVANT PARTIES AND ENTITIES

During the period charged in this Count:

2. Defendant Mitchell E. Mosallem (hereinafter “Mosallem”) resided in Manhattan, New York. Mosallem was vice president and later executive vice president and director of graphic services for Grey Global Group, Inc. or its predecessors or affiliates, including Grey Advertising, Inc. (hereinafter collectively “Grey”). As director of graphic services, Mosallem supervised approximately 70 employees.

3. Defendant John Ghianni (hereinafter “Ghianni”) resided in Fort Lee, New Jersey. Ghianni was a salesperson representing a company that supplied graphic services, with responsibility for the Grey account.

4. Defendant The Color Wheel, Inc., a company located in Manhattan, New York, was a supplier of graphic services, including retouching and separation services. The Color Wheel, Inc. was wholly owned by Haluk K. Ergulec. In 1999 The Color Wheel, Inc. merged with two other companies wholly owned by Haluk K. Ergulec, Manhattan Color Graphics, Inc., and A2, Inc., with The Color Wheel, Inc. being the surviving corporate entity. Manhattan Color Graphics, Inc., A2, Inc., and the pre- and post-merger The Color Wheel, Inc. are hereinafter collectively referred to as “Color Wheel”.

5. Grey, headquartered in Manhattan, New York, provided advertising, marketing, public relations, and media services. Grey was one of the largest advertising agencies in the world, with as many as 12,000 employees and offices in 90 countries. Grey, which had approximately \$8.3 billion in billings in 2000, had a client roster that included major consumer brands companies such as Brown & Williamson Tobacco Corp., The Procter & Gamble Co., GlaxoSmithKline p.l.c., Mars Inc., Hasbro, Inc., Eli Lilly & Co., 3M Co., and Joseph E. Seagram & Sons, Inc.

6. Brown & Williamson Tobacco Corp. (hereinafter “B&W”) marketed tobacco products. B&W, the third largest cigarette manufacturer and marketer in the United States, was headquartered in Louisville, Kentucky. B&W was a subsidiary of British American Tobacco p.l.c. It had approximately 5,000 employees. B&W’s principal brands were Kool, Lucky Strike, Carlton, Kent, Capri, and Pall Mall.

7. Whenever in this Count reference is made to any act, deed, or transaction of any corporation, such allegation shall be deemed to mean that the corporation engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or other representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

8. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a salesperson representing Color Wheel (hereinafter "CC-1"), a Grey executive, a Grey production employee, and salespeople representing certain graphics services companies.

## II. DEFINITIONS

9. "Retouching" is the process of editing or otherwise manipulating a photograph or digital image to achieve an aesthetically desired result. The process employs a range of image processing tools which can be used to compose, change, and improve any type of image.

10. "Separation" is the act of decomposing an image or photograph into single-color layers, so that it may be printed with an offset printing press.

## III. TRADE AND COMMERCE

11. From approximately late 1994 until approximately 2001, pursuant to contracts that are the subject of this Count, B&W, through its agency Grey, purchased substantial quantities of retouching and separation services from members of the conspiracy. Materials and

equipment were transported across state lines for use in performing some of the aforementioned retouching and separation services.

12. The activities of certain of the defendants and co-conspirators with respect to the sale of retouching and separation services to B&W, purchased through its agency Grey, including the sale of retouching and separation services pursuant to contracts that are the subject of this Count, were within the flow of, and substantially affected, interstate trade and commerce.

13. During the period covered by this Count, certain of the defendants and co-conspirators performed retouching or separation services on advertisements, including advertisements completed pursuant to contracts that are the subject of this Count, which were thereafter shipped across state lines in a continuous and uninterrupted flow of interstate commerce for inclusion in magazines and other media manufactured and produced outside the State of New York. These magazines and other media were also shipped across state lines in a continuous and uninterrupted flow of interstate commerce from their places of manufacture to customers located throughout the United States.

#### IV. DESCRIPTION OF THE OFFENSE

14. From approximately late 1994 until approximately 2001, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (Title 15, United States Code, Section 1).

15. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators, the substantial terms of which were to rig bids and allocate contracts for the supply of retouching and separation services to B&W, contracted through its agency Grey.

16. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including, among other things:

(a) On approximately July 1, 1994, B&W retained Grey as its agent to provide advertising and marketing services on behalf of its various brands. The agreement between B&W and Grey and all succeeding agreements (hereinafter collectively “the agreement”) stated that Grey owed the highest fiduciary duties to B&W, and obliged Grey to exert its best efforts and apply its highest professional skill on B&W’s behalf;

(b) As part of the agreement, Grey, acting on B&W’s behalf, procured various goods and services from third parties. These goods and services included retouching and separation services from graphics supply companies. To ensure that B&W received the best value on purchases made on its behalf by Grey, the agreement between B&W and Grey required that Grey obtain at least three competitive bids before entering into any single contract for goods or services in excess of \$25,000, and at least once a year to obtain competitive bids for any other goods or services purchased on B&W’s behalf;

(c) Certain of the defendants and co-conspirators designated in advance that defendant Color Wheel would be the low bidder, among the co-conspirators, on contracts to

supply retouching services, and that another company would be the low bidder on contracts to supply separation services on behalf of B&W brands;

(d) Certain of the defendants and co-conspirators discussed and agreed on the prices they would bid on contracts to supply retouching and on contracts to supply separation services on behalf of B&W brands;

(e) Certain of the defendants and co-conspirators submitted, or caused to be submitted, intentionally high, noncompetitive bids on contracts to supply retouching and separation services on behalf of B&W brands, with the understanding that they would be allowed to submit bids for, and under certain circumstances allocated contracts to supply, various services on behalf of other Grey clients. The intentionally high bids relating to work Grey procured for B&W were submitted in order to make it appear to B&W that there had been competition for its contracts when, in fact, there had not; and

(f) Certain of the defendants and co-conspirators paid substantial amounts of cash or goods and services to defendant Mosallem for his assistance in controlling B&W's program for seeking competitive bids for contracts for retouching and for contracts for separation services, and for ensuring that no potential competitors who were not co-conspirators would be invited to bid on such contracts.

## V. JURISDICTION AND VENUE

17. The aforesaid combination and conspiracy was formed and carried out, in part, within the Southern District of New York within the five years preceding the filing of this Indictment.

IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1

COUNT TWO -- CONSPIRACY  
(18 U.S.C. § 371)

The Grand Jury further charges:

18. Mitchell E. Mosallem, Haluk K. Ergulec, Birj Deckmejian, and The Color Wheel, Inc. are hereby indicted and made defendants on the charge stated below.

19. Paragraphs 2, 4, 5, 7, 9, and 10 of Count One of this Indictment are repeated, realleged, and incorporated in Count Two as if fully set forth in this Count.

VI. THE RELEVANT PARTIES AND ENTITIES

20. Defendant Haluk K. Ergulec (hereinafter “Ergulec”) was a resident of Manhattan. Ergulec was the owner of Color Wheel.

21. Defendant Birj Deckmejian (hereinafter “Deckmejian”) was a resident of Manhattan. Deckmejian was a salesperson representing Color Wheel, with responsibility for the Grey account.

22. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof. These included a salesperson representing Color Wheel (hereinafter “CC-1”) and a Grey executive (hereinafter “CC-2”).

VII. DEFINITIONS

23. “Prepress services” are the services and materials necessary to provide magazines and other print media with the images that they manufacture and publish. These services include retouching and separation services.

24. “Print production” is the production of multiple, printed copies of images inserted in print media or otherwise distributed to potential consumers.

#### VIII. DESCRIPTION OF THE OFFENSE

25. From approximately 1991 until approximately July 2000, the exact dates being unknown to the Grand Jury, in the Southern District of New York and elsewhere, defendants Mosallem, Ergulec, Deckmejian, and Color Wheel and co-conspirators unlawfully, willfully, and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States of America, to wit, to violate Title 18, United States Code, Section 1341, in violation of Title 18, United States Code, Section 371.

26. It was a part and an object of the conspiracy that defendants Mosallem, Ergulec, Deckmejian, and Color Wheel, and others known and unknown, having devised and intending to devise a scheme and artifice to defraud clients of Grey, and for obtaining money and property from Grey clients by means of false and fraudulent pretenses, representations, and promises, unlawfully, willfully, and knowingly, for the purpose of executing such scheme and artifice, would and did place in post offices and authorized depositories for mail matter, matters and things to be sent and delivered by the Postal Service, and deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and take and receive therefrom, such matters and things, and knowingly cause to be delivered by mail and such carriers according to the directions thereon, and at the place at which they were directed to be delivered by the persons to whom they were addressed such matters and things, in violation of Title 18, United States Code, Section 1341.



IX. THE MANNER AND MEANS BY WHICH THE  
CONSPIRACY WAS CARRIED OUT

The manner and means by which the conspiracy was sought to be accomplished included, among others, the following:

27. Grey developed advertising and marketing campaigns on behalf of its clients. Some of the advertising that Grey developed appeared in printed form, such as advertisements consisting of pictures and words in magazines. On behalf of its clients, through its graphics services department, Grey contracted with third parties that were suppliers of graphics services (“graphics suppliers”) to provide services and materials related to advertising that appeared in print, including prepress services and print production. Defendant Mosallem was responsible for establishing procedures for the selection and supervision of graphics suppliers, including the initial review and authorization of their bills for payment.

28. Pursuant to agreements with certain of its clients, Grey was paid a fee for its creative work on behalf of the client, and for its supervision of the production of various components of a campaign, including supervision of prepress services and print production. In addition, pursuant to express written agreements with certain of its clients, Grey paid third parties, and was reimbursed by its clients, for “out-of-pocket” costs, including the actual costs of prepress services and print production provided by graphics suppliers. Grey received no markup or other profit on these “out-of-pocket” costs. Grey’s clients relied on Grey’s representations regarding the accuracy of the bills it presented for reimbursement or the amounts for which it sought reimbursement.

29. The advertising Grey developed and produced for each client often consisted of many separate jobs, with separate, corresponding contracts between Grey and various third party graphics suppliers. In many cases, Grey provided the initiative and exercised its discretion in selecting a graphics supplier and awarding a contract for a particular job or a related group of jobs (a “campaign”) after seeking what purported to be competitive bids from multiple graphics suppliers. Usually, by the time a contract was awarded, Grey and its client had established a budget for the job, in part by referring to the prices quoted by the competing graphics suppliers. Employees of Grey’s graphics services department were responsible for monitoring jobs to determine whether they would be completed within the established budgets and, if not, for seeking the client’s approval to increase the budgets. The actual value of work done in connection with each job ultimately could be lower than, equal to, or higher than the established budget.

30. The third party graphics suppliers issued invoices to Grey, corresponding to the contracts they had been awarded, when those contracts were completed. Employees of Grey’s graphics services department were responsible for reviewing the invoices for accuracy and authorizing them for payment. In situations where the graphics supplier’s price for the work exceeded the budget for a particular job, the graphics supplier often knew, at the time it was prepared to seek payment, that it would not be paid in full for the work it had done.

31. Beginning in approximately 1991, defendant Mosallem agreed with defendant Ergulec, defendant Deckmejian, defendant Color Wheel, and certain co-conspirators to defraud certain Grey clients by causing defendant Color Wheel to issue false and fraudulent invoices relating to its contracts to produce advertising services and materials. Typically, the invoices were false and fraudulent in that the quantities -- and thus the prices -- of certain line items listed

in the invoices were inflated to allow defendant Color Wheel to recoup three specific types of expenses:

(a) Certain invoices were inflated to allow defendant Color Wheel or defendant Deckmejian to recoup the cost of tickets to theater, sporting, and cultural events it or defendant Deckmejian had provided for the personal benefit of defendant Mosallem, CC-2, other senior employees and executives of Grey, and members of their families;

(b) Certain invoices were inflated to allow defendant Color Wheel to recoup the cost of goods and services it had provided for the personal benefit of defendant Mosallem, CC-2, other senior employees and executives of Grey, and members of their families. These goods and services included the printing of graphics items such as wedding invitations, holiday cards, brochures, and family and other personal photographs; and

(c) Certain invoices were inflated to allow defendant Color Wheel to recoup charges for work it had performed on earlier jobs, frequently for different Grey clients, for which it had not been fully paid. In these instances, defendant Color Wheel had not received full compensation for the earlier work performed because those jobs had run overbudget, or because the client which had commissioned the advertising was unable to pay its bills because it was bankrupt.

32. Defendant Ergulec instructed CC-1, and defendant Mosallem instructed CC-2, to track the expenses defendant Color Wheel was to recoup (hereinafter “monies owed”), and to identify jobs to which those amounts could be added by fraudulently increasing the quantities and prices of certain line items in those jobs.

33. Between approximately 1991 and July 2000, CC-1 created and maintained lists of

monies owed and showed them to CC-2, who then identified to which jobs those monies should be added and, in many cases, exactly where and how on the false and fraudulent invoices those charges should appear. On many occasions, CC-2 consulted with other employees in Grey's graphics services department in order to identify the jobs to which monies could be added, normally in situations where the job was expected to run under budget or where the job had not yet been budgeted but defendant Color Wheel could be given an opportunity to increase its bid or price quotation.

34. Between approximately 1991 and July 2000, defendant Mosallem, defendant Ergulec, defendant Deckmejian, and co-conspirators caused defendant Color Wheel to issue to Grey numerous false and fraudulent invoices.

35. Defendant Mosallem and co-conspirators further caused Grey to pay the false and fraudulent invoices and then to seek reimbursement from its clients.

36. Certain of the checks issued by Grey to defendant Color Wheel in payment of the false and fraudulent invoices were sent via the United States mail.

37. Certain of Grey's invoices to its clients, and corresponding checks issued by Grey clients in payment of the fraudulently inflated charges, were sent via the United States mail or by private or commercial interstate carrier.

38. Certain negatives, press proofs, and other portions of finished advertisements, which were produced by Color Wheel and the prices of which were fraudulently inflated pursuant to the charged conspiracy, were sent by Grey to magazines located throughout the United States by private or commercial interstate carrier.

#### VIII. OVERT ACTS

39. In furtherance of the conspiracy and to effect the illegal objects thereof, defendant Mosallem, defendant Ergulec, defendant Deckmejian, defendant Color Wheel, and others known and unknown, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

(a) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, in which invoice the line item for retouching was fraudulently inflated by \$5,000;

(b) On approximately June 3, 1999, Grey shipped by Josef Traffic Consulting & Expediting Service, Inc. (hereinafter "Josef Expediting"), a private or commercial interstate carrier, negatives and proofs for a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, from defendant Color Wheel to Teen Magazine in Los Angeles, California;

(c) On approximately June 4, 1999, Grey shipped by Josef Expediting, a private or commercial interstate carrier, negatives and proofs for a Cover Girl smudgeproof mascara magazine advertisement featuring Brandy Norwood, from defendant Color Wheel to Young Miss Magazine c/o Brown Printing in Waseca, Minnesota;

(d) On approximately March 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Crackle Lacquer nail polish magazine advertisement, in which invoice the line items for various retouching services were fraudulently inflated by a total of \$2,000;

(e) On approximately March 3, 1999, Grey shipped by Josef Expediting, a private or

commercial interstate carrier, negatives and press proofs for a Cover Girl Crackle Lacquer nail polish magazine advertisement, from defendant Color Wheel to Jump Magazine c/o Western Laser Graphics in Valencia, California;

(f) On approximately September 30, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with a Cover Girl Smoothers magazine advertisement featuring Brandy Norwood, Niki Taylor, Yamila Diaz, Lonneke Engel, and Faith Hill, in which invoice the line items for various retouching services were fraudulently inflated by a total of \$5,000;

(g) On approximately January 12, 1999, defendant Color Wheel issued a false and fraudulent invoice to Grey in connection with Pantene bus shelter outdoor advertisements, in which the line item for retouching services was fraudulently inflated by a total of \$2,025;

(h) On approximately January 22, 1999, Grey shipped by BEK Expediting, Inc., a private or commercial interstate carrier, Pantene bus shelter outdoor advertisements to various bus shelters in the United States;

(i) On approximately April 12, 2000, defendant Deckmejian paid \$500 for tickets to the Big East basketball tournament;

(j) On approximately May 3, 1999, Gotham Sales, Inc. (hereinafter "Gotham Sales"), a ticket brokerage company located in Stamford, Connecticut, issued an invoice to defendant Deckmejian that included a charge of \$1,350 for tickets to the Lion King; and

(k) On approximately January 4, 1999, Gotham Sales issued an invoice to defendant Deckmejian that included a charge of \$600 for tickets to the Metropolitan Opera.

IN VIOLATION OF TITLE 18, UNITED STATES CODE, SECTION 371

Dated: A True Bill

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Foreperson

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